

# HOUSE BILL 295

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CF SB 364

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By: **Delegate Feldman**

Introduced and read first time: February 2, 2011

Assigned to: Economic Matters

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Committee Report: Favorable

House action: Adopted

Read second time: March 2, 2011

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Corporations – Maryland General Corporation Law – Miscellaneous**  
3 **Provisions**

4 FOR the purpose of repealing certain provisions of law relating to dividends payable in  
5 shares of one class of a corporation's stock to holders of shares of another class  
6 of the corporation's stock; clarifying that all business and affairs of a  
7 corporation, whether or not in the ordinary course, must be managed under the  
8 direction of the corporation's board of directors; requiring each nominee for  
9 director of a corporation to have the qualifications required by the charter or  
10 bylaws of the corporation; providing that a director of a corporation holds office  
11 until the time the director ceases to have certain qualifications under certain  
12 circumstances; clarifying that certain directors hold over and continue to serve  
13 as directors under certain circumstances; clarifying the circumstances under  
14 which certain actions may be taken without a meeting of the board of directors  
15 or a committee of the board; clarifying that certain references to a majority or  
16 other proportion of directors refer to a majority or other proportion of votes  
17 entitled to be cast by the directors; repealing a certain provision of law that  
18 requires the board of directors to provide a place for a meeting of the  
19 stockholders under certain circumstances; altering the circumstances under  
20 which certain mergers need be approved by a Maryland successor corporation  
21 only by a majority of its entire board of directors; altering the information that  
22 must be included in articles of consolidation, merger, share exchange, or  
23 transfer if the successor is a certain business entity; repealing certain  
24 provisions of law requiring the president or a director of a corporation the  
25 charter of which has been revived to call a meeting of the stockholders for a

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 certain purpose; and generally relating to the Maryland General Corporation  
2 Law.

3 BY repealing and reenacting, with amendments,  
4 Article – Corporations and Associations  
5 Section 2–309(c), 2–401(a), 2–403(a), 2–404(b), 2–405, 2–408(c) and (d),  
6 2–503(b), 3–105(a), and 3–109(a)  
7 Annotated Code of Maryland  
8 (2007 Replacement Volume and 2010 Supplement)

9 BY repealing  
10 Article – Corporations and Associations  
11 Section 3–511  
12 Annotated Code of Maryland  
13 (2007 Replacement Volume and 2010 Supplement)

14 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article – Corporations and Associations**

17 2–309.

18 (c) (1) A division of issued shares into a greater number of shares of the  
19 same class without any change in the aggregate amount of stated capital is a stock  
20 split, and a division with a change in the aggregate amount of stated capital is a stock  
21 dividend within the meaning of this subsection.

22 (2) If authorized by its board of directors and unless the charter  
23 provides otherwise, shares may be issued by a corporation, without consideration to  
24 the holders of one or more classes or series of stock, as a stock split or a stock dividend.

25 (3) If a stock dividend is payable in a corporation’s own stock with par  
26 value, the shares shall be issued at par value and, at the time the stock dividend is  
27 paid, the corporation shall transfer from surplus to stated capital an amount at least  
28 equal to the aggregate par value of the shares to be issued.

29 (4) If a stock dividend is payable in a corporation’s own stock without  
30 par value, the board of directors shall adopt at the time the stock dividend is declared  
31 a resolution which sets the aggregate amount to be attributed to stated capital with  
32 respect to the shares that constitute the stock dividend and, at the time the stock  
33 dividend is paid, the corporation shall transfer at least that amount from surplus to  
34 stated capital.

35 [(5) A dividend payable in shares of one class of a corporation’s stock  
36 may not be declared or paid to the holders of shares of another class of stock unless the  
37 payment has been:

1 (i) Approved by the board of directors in accordance with  
2 specific authority in the charter; or

3 (ii) Approved at a meeting of stockholders by the affirmative  
4 vote of a majority of all the votes entitled to be cast on the matter of each class entitled  
5 to vote on it.]

6 2-401.

7 (a) [The] **ALL** business and affairs of a corporation, **WHETHER OR NOT IN**  
8 **THE ORDINARY COURSE**, shall be managed under the direction of a board of  
9 directors.

10 2-403.

11 (a) Each director **AND EACH NOMINEE FOR DIRECTOR** of a corporation  
12 shall have the qualifications required by the charter or bylaws of the corporation.

13 2-404.

14 (b) (1) Except as provided in paragraph (2) of this subsection, at each  
15 annual meeting of stockholders, the stockholders shall elect directors to hold office  
16 until the earlier of:

17 (i) The next annual meeting of stockholders and until their  
18 successors are elected and qualify; [or]

19 (ii) The time provided in the terms of any class or series of stock  
20 pursuant to which such directors are elected; **OR**

21 **(III) THE TIME A DIRECTOR CEASES TO HAVE THE**  
22 **QUALIFICATIONS THAT WERE REQUIRED BY THE CHARTER OR BYLAWS OF THE**  
23 **CORPORATION AT THE TIME THE DIRECTOR WAS ELECTED, IF THE CHARTER OR**  
24 **BYLAWS REQUIRES THE DIRECTOR'S TERM TO END UPON A FAILURE TO HAVE**  
25 **THOSE QUALIFICATIONS.**

26 (2) Except for a corporation that has elected to be subject to § 3-803 of  
27 this article, if the directors are divided into classes, the term of office may be provided  
28 in the bylaws, except that:

29 (i) The term of office of a director may not be longer than 5  
30 years or, except in the case of an initial or substitute director, shorter than the period  
31 between annual meetings; and

32 (ii) The term of office of at least one class shall expire each year.

1 2-405.

2 (a) [In] **EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION**, IN  
3 case of failure to elect directors at the designated time, the directors holding over shall  
4 continue to [manage the business and affairs] **SERVE AS DIRECTORS** of the  
5 corporation until their successors are elected and qualify.

6 **(B) IF THE NUMBER OF DIRECTORS TO BE ELECTED AT THE**  
7 **DESIGNATED TIME, TOGETHER WITH THE NUMBER OF DIRECTORS WHO**  
8 **OTHERWISE WOULD HOLD OVER, EXCEEDS THE NUMBER OF DIRECTORS WHO**  
9 **WERE TO BE ELECTED, THEN THE DIRECTORS WHO WILL HOLD OVER AND**  
10 **CONTINUE TO SERVE AS DIRECTORS OF THE CORPORATION UNTIL THEIR**  
11 **SUCCESSORS ARE ELECTED AND QUALIFY SHALL BE DETERMINED:**

12 **(1) BY A MAJORITY VOTE OF THE DIRECTORS ELECTED AT THE**  
13 **DESIGNATED TIME AND, IF THE BOARD IS CLASSIFIED, ANY DIRECTORS WHOSE**  
14 **TERMS DID NOT EXPIRE AT THE DESIGNATED TIME, WHETHER OR NOT**  
15 **SUFFICIENT TO CONSTITUTE A QUORUM; OR**

16 **(2) AS OTHERWISE PROVIDED IN THE CHARTER OR BYLAWS OF**  
17 **THE CORPORATION.**

18 [(b)] **(C)** A director not elected annually in accordance with § 2-501(b) of  
19 this title shall be deemed to be continuing in office and shall not be deemed to be  
20 holding over under subsection (a) **OR (B)** of this section until after the time at which  
21 an annual meeting is required to be held under § 2-501(b) of this title or the charter or  
22 bylaws of the corporation.

23 2-408.

24 (c) Any action required or permitted to be taken at a meeting of the board of  
25 directors or of a committee of the board may be taken without a meeting if a  
26 unanimous consent which sets forth the action is:

27 (1) Given in writing or by electronic transmission by each member of  
28 the board or committee **ENTITLED TO VOTE ON THE MATTER**; and

29 (2) Filed in paper or electronic form with the minutes of proceedings of  
30 the board or committee.

31 (d) (1) The charter may provide that one or more directors or a class of  
32 directors shall have more or less than one vote per director on any matter.

33 (2) If the charter provides that one or more directors shall have more  
34 or less than one vote per director on any matter, every reference in this article to a

1 majority or other proportion of directors shall refer to a majority or other proportion of  
2 votes [of] **ENTITLED TO BE CAST BY** the directors.

3 2-503.

4 (b) [(1) Subject to paragraph (2) of this subsection, if] **IF** the board of  
5 directors is authorized to determine the place of a meeting of the stockholders, the  
6 board may determine that the meeting not be held at any place, but instead may be  
7 held solely by means of remote communication, as authorized by subsection (c) of this  
8 section.

9 [(2) At the request of a stockholder, the board of directors shall provide  
10 a place for a meeting of the stockholders.]

11 3-105.

12 (a) A consolidation, merger, share exchange, or transfer of assets shall be  
13 approved in the manner provided by this section, except that:

14 (1) A merger of a 90 percent or more owned subsidiary with or into its  
15 parent need be approved only in accordance with the provisions of § 3-106 of this  
16 subtitle;

17 (2) A share exchange need be approved by a Maryland successor only  
18 by its board of directors and by any other action required by its charter;

19 (3) A transfer of assets need be approved by a Maryland transferee  
20 corporation only by its board of directors and by any other action required by its  
21 charter;

22 (4) A foreign corporation party to the transaction shall have the  
23 transaction advised, authorized, and approved in the manner and by the vote required  
24 by its charter and the laws of the place where it is organized;

25 (5) A merger need be approved by a Maryland successor corporation  
26 only by a majority of its entire board of directors if:

27 (i) The merger does not reclassify or change the terms of any  
28 class or series of its stock that is outstanding immediately before the merger becomes  
29 effective or otherwise amend its charter [and the number of its shares of stock of such  
30 class or series outstanding immediately after the effective time of the merger does not  
31 increase by more than 20 percent of the number of its shares of the class or series of  
32 stock that is outstanding immediately before the merger becomes effective]; or

33 (ii) There is no stock outstanding or subscribed for and entitled  
34 to be voted on the merger; and

1           (6)    A business trust party to a merger shall have the merger advised,  
2 authorized, and approved in the manner and by the vote required by its declaration of  
3 trust and the laws of the place where it is organized.

4    3–109.

5           (a)    Articles of consolidation, merger, share exchange, or transfer shall  
6 contain the terms and conditions of the transaction and the manner of carrying it into  
7 effect, including:

8           (1)    A statement:

9                   (i)    In a merger, consolidation, or share exchange, that each  
10 party to the articles agrees to merge, to consolidate to form a new corporation, or to  
11 acquire stock or have its stock acquired in a share exchange, as the case may be; or

12                   (ii)   In a transfer, that the transferor agrees to sell, lease,  
13 exchange, or transfer all or substantially all of its property and assets;

14           (2)    The name and place of incorporation or organization of:

15                   (i)    Each party to the articles; and

16                   (ii)   The successor corporation in a consolidation, merger, or  
17 share exchange or the successor domestic partnership, limited partnership or limited  
18 liability company in a merger;

19           (3)    As to each foreign corporation:

20                   (i)    The date of its incorporation;

21                   (ii)   A statement whether it is incorporated under general law or  
22 by special act and, if incorporated by special act, the chapter number and year of  
23 passage; and

24                   (iii)   If the corporation is registered or qualified to do business in  
25 this State, the date of its registration or qualification;

26           (4)    As to each foreign business trust:

27                   (i)    The date of its organization; and

28                   (ii)   If the business trust is registered or qualified to do business  
29 in this State, the date of its registration or qualification;

30           (5)    As to each foreign partnership, limited partnership or limited  
31 liability company:

1 (i) The date of its formation; and

2 (ii) If the foreign partnership, limited partnership or limited  
3 liability company is registered or qualified to do business in this State, the date of its  
4 registration or qualification;

5 (6) The name, address, and principal place of business of the  
6 transferee in a transfer of assets;

7 (7) Each county in this State where:

8 (i) Each corporation, partnership, limited partnership, limited  
9 liability company, and business trust party to the articles has its principal office; and

10 (ii) Any of the parties in a consolidation, merger, or transfer,  
11 other than the successor, owns an interest in land;

12 (8) If the successor is a foreign corporation, foreign partnership,  
13 limited partnership, limited liability company, or a foreign business trust:

14 (i) The location of its principal office in the place where it is  
15 organized; and

16 (ii) The name and address of its resident agent in [this State]  
17 **THE PLACE WHERE IT IS ORGANIZED;**

18 (9) A statement that the terms and conditions of the transaction set  
19 forth in the articles were advised, authorized, and approved by each corporation,  
20 partnership, limited partnership, limited liability company, or business trust party to  
21 the articles in the manner and by the vote required by its charter or declaration of  
22 trust and the laws of the place where it is organized, and a statement of the manner of  
23 approval; and

24 (10) Every other provision necessary to effect the consolidation, merger,  
25 share exchange, or transfer of assets.

26 [3-511.

27 (a) Except as provided in subsection (b) of this section, promptly after the  
28 charter of the corporation is revived, the president or a director of the corporation shall  
29 call a meeting of the stockholders to elect a full board of directors, giving notice in the  
30 manner required by Title 2 of this article.

31 (b) The president or a director of a corporation registered under the  
32 Investment Company Act of 1940 shall not be required to call a meeting of

1 stockholders to elect a full board of directors until the corporation is required to hold  
2 an annual meeting under § 2-501 of this article.]

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 June 1, 2011.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.